

Exhibit A

CONFIDENTIAL

February 26, 2021

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

Students For Fair)
Admissions, INC,)

Plaintiff,)

VS.) CIVIL ACTION
NO.: 1:20 cv 00763 RP
UNIVERSITY OF TEXAS AT)
AUSTIN, ET AL.,)

Defendants.)

ORAL AND VIDEOTAPED DEPOSITION OF

FEBRUARY 26, 2021

VOLUME 1

ATTORNEYS' EYES ONLY

ORAL AND VIDEOTAPED DEPOSITION OF [REDACTED]
produced as a witness at the instance of the DEFENDANT,
and duly sworn, was taken in the above styled and
numbered cause on February 26, 2021, from 7:36 a.m. to
2:23 p.m. via Zoom, before Miah Hoffman, CSR in and for
the State of Texas, reported by oral stenography,
pursuant to the Federal Rules of Civil Procedure and the
provisions stated on the record or attached hereto.

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P R O C E E D I N G S

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1 REPORTER: We are on the record. Today's
2 date is February 26th, 2021. The time is 7:36 a.m.
3 This is the oral deposition of [REDACTED] and it is
4 being conducted remotely by agreement of the parties or
5 in accordance with current emergency orders.
6 The witness is attending from the law office of Consovoy
7 and McCarthy located at 1600 Wilson, Arlington, Virginia
8 22209.

9 My name is Miah Hoffman. CSR number
10 11773 with Kim Tindall and Associates. I am
11 administering the oath and recording the deposition
12 remotely by oral stenographic means. My business
13 address is 16414 San Pedro Avenue, Suite 900, San
14 Antonio, Texas 78232.

15 The witness has been identified to me
16 through his U.S. passport. Would counsel please state
17 their appearances for the record?

18 MR. POWERS: Matt Powers for the
19 defendants.

20 MR. MCKETTA: Mike McKetta also for the
21 defendants.

22 MR. HINOJOSA: David Hinojosa for the
23 student intervenors.

24 MS. SIMPSON: Carter Simpson for the
25 student intervenors.

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1 MR. MCCARTHY: Thomas McCarthy from
2 Consovoy McCarthy for Student For Fair Admissions, Inc.

3 (Witness duly sworn.)

4 [REDACTED]
5 having been first duly sworn, testified as follows:

6 EXAMINATION

7 BY MR. POWERS:

8 MR. POWERS: Mr. McCarthy, is it okay to
9 proceed? Did you want to say anything on the record
10 before we get started?

11 MR. MCCARTHY: Thanks, Mr. Powers. I
12 would. Consistent with, I think, our practice in the
13 other depositions in this case, I'd like to put a few
14 stipulations on the record and I'll -- I'll do so now.
15 Thanks.

16 During this deposition it's possible that the
17 University of Texas, or the intervenors, will ask
18 questions that SFFA believes infringe upon the First
19 Amendment and associational rights of SFFA and its
20 members. SFFA may instruct the witness not to answer a
21 question on these grounds. If a disagreement arises as
22 to whether this instruction is proper, the parties agree
23 to do their best to resolve the disagreement during the
24 deposition or, if necessary, before the Court. SFFA
25 agrees that UT and the intervenors may have the right to

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1 leave the deposition open to recall the witness.

2 In addition, the Court has entered a scheduling
3 order limiting the topics of this deposition. The
4 Court's scheduling order states that right now none of
5 the discovery shall be permitted on any issue other than
6 the issues of jurisdiction or claim preclusion. Last,
7 consistent with our practice in this case, SFFA is
8 designating the entire transcript as for counsel,
9 attorneys' eyes only. Thanks very much, Mr. Powers.

10 MR. POWERS: Thanks, Mr. McCarthy.

11 Q. (BY MR. POWERS) [REDACTED] please state your
12 name.

13 A. [REDACTED]

14 Q. This is not your first deposition, correct?

15 A. Yes.

16 Q. Is it your first deposition over Zoom?

17 A. Yes.

18 Q. So one of the things I want to flag is that
19 during the course of the day, as with any deposition, if
20 I ask a question that's poorly worded or otherwise
21 unclear that you let me know and I'll clarify that.

22 A. Okay.

23 Q. And, in addition, we have the special
24 circumstance, because we're connected remotely, over
25 Zoom, if at any point there's a break in the connection

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1 there to speak it in my own opinion, but we'll go beyond
2 that. This deposition isn't about --

3 THE WITNESS: On national TV though. It
4 was on -- it was on national TV as I recall, but yeah,
5 all right. It's -- this is about me, this is not about
6 you, but --

7 MR. HINOJOSA: Sure. And this is --

8 THE WITNESS: You introduced yourself and
9 I did remember you from that -- from that particular
10 show.

11 Q. (BY MR. HINOJOSA) All right. Well, I
12 appreciate that. So my name is David Hinojosa again and
13 I'm gonna be asking you some questions and I just want
14 to make -- make sure certain things are clear and that
15 is that you're here testifying on behalf of SSFA; is
16 that correct?

17 A. Yes.

18 Q. And you're not here testifying in your own
19 individual capacity, correct?

20 A. Yes.

21 Q. And SSFA is the plaintiff in this case suing
22 UT, correct?

23 A. Yes.

24 Q. All right. So did you say earlier that it was
25 the board that voted to bring this lawsuit?

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1 MR. MCCARTHY: Objection form.

2 THE WITNESS: Yes, sorry.

3 MR. HINOJOSA: Okay.

4 THE WITNESS: Sorry, yes.

5 Q. (BY MR. HINOJOSA) And you also mentioned I
6 think, previously that SFFA relies on its members who
7 have been impacted by the litigation to bring these
8 types of lawsuits; is that correct?

9 MR. MCCARTHY: Objection form.

10 THE WITNESS: SFFA has members who have
11 been rejected by these various universities and SFFA
12 then acts in our organizational capacity to challenge
13 those programs.

14 Q. (BY MR. HINOJOSA) So such as, you know, when
15 you challenged Harvard you had certain individuals who
16 were rejected by Harvard's admissions plan and then on
17 behalf of those members as -- as an association you sued
18 Harvard, correct?

19 MR. MCCARTHY: Objection form.

20 THE WITNESS: Correct.

21 Q. (BY MR. HINOJOSA) And the same thing applies
22 at UNC, Yale, and UT?

23 MR. MCCARTHY: Objection form.

24 THE WITNESS: Correct.

25 Q. (BY MR. HINOJOSA) All right. And you conduct

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1 outreach in the public for membership; is that right?

2 A. Yes.

3 Q. And you're also seeking to identify persons
4 who might help SFFA file a lawsuit, correct?

5 MR. MCCARTHY: Objection form.

6 THE WITNESS: Yes.

7 Q. (BY MR. HINOJOSA) So I'm gonna bring up -- let
8 me -- I have a few exhibits here. I'm gonna start with
9 -- hold on right quick, sorry. All right. Sorry about
10 that I was in the wrong folder. Just make sure I get
11 this in the record. This is Exhibit -- what we're gonna
12 mark as Exhibit 029 and it's UT deposition of the
13 corporate -- corporate representative of Students For
14 Fair Admissions and you have received this and you are
15 here pursuant to this deposition notice, correct?

16 (Exhibit No. 029, marked.)

17 A. I'm afraid I don't know what you're -- what
18 you're sharing --

19 Q. Oh.

20 A. -- I don't -- I don't

21 Q. You know what, sorry about that let me redo
22 this.

23 MR. MCCARTHY: Counsel, are you referring
24 to the notice that Mr. Powers started off the deposition
25 with?

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1 MR. HINOJOSA: Yeah, but I don't think he
2 entered it as an exhibit.

3 MR. POWERS: That's correct. I did not.

4 MR. MCCARTHY: Just want to make sure
5 we're talking about the same document.

6 MR. HINOJOSA: Yes. Okay. I just sent
7 it to you. Let me know when you've received it and
8 opened it and that's Exhibit 029.

9 THE WITNESS: I received it; I know what
10 it is.

11 Q. (BY MR. HINOJOSA) Okay. And you're here to
12 testify in pursuant to this notice, correct?

13 A. That's correct.

14 Q. And attached to Exhibit 029 on Page 4, is
15 Exhibit A, the deposition topics and those are the
16 deposition topics that you agreed to testify here today,
17 correct?

18 A. I am looking at Page 4 deposition topics, yes.

19 Q. All right. And among those includes "The
20 basis for any claim that any individual member of SFFA
21 has or would have standing to raise the challenge as
22 asserted by SSFA in the present lawsuit." That's Number
23 11.

24 A. I see that.

25 Q. Is that correct? You're here prepared to

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1 testify about that today, correct?

2 A. Yes.

3 Q. Okay. So I just wanted to make sure I took
4 care of that logistical thing. I wanted to get back to
5 the discussion that we were offering about some of the
6 outreach that SFFA does and I'm uploading another
7 exhibit which we're gonna identify as Exhibit 030. And
8 just so you know this is a document that was -- that was
9 sent to us in response to UT's request for production
10 and let me know once you've received that and opened
11 Exhibit 030. And for the record the Bates stamp on this
12 is SFFA UT 00179.

13 (Exhibit No. 030, marked.)

14 THE WITNESS: I have -- let's see if I
15 can read this stamp. Well, I can't -- I can't read the
16 stamp, but I see it is a website that is styled UT Not
17 Fair.

18 Q. (BY MR. HINOJOSA) UT Not Fair is that funded
19 and operated by SFFA?

20 MR. MCCARTHY: Objection form.

21 THE WITNESS: No. No.

22 Q. (BY MR. HINOJOSA) Who operates the UT Not Fair
23 site?

24 A. The UT Not Fair was originally launched by the
25 Project on Fair Representation. I don't know that the

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1 UT Not Fair site is still active.

2 Q. Okay. And so what forms of communication does
3 SFFA use in trying to recruit persons to SFFA who have
4 been denied admission at certain universities?

5 A. Basically there are two things that we do.
6 One, is we maintain a website and the second, is that I
7 -- I occasionally will give speeches and participate in
8 media events in which I encourage people to visit our
9 website and join our organization.

10 Q. You do any social media outreach as SFFA?

11 A. We -- we have a Facebook page that I know -- I
12 know is maintained by our -- our database vendor. We
13 have a Twitter account that I'm not at all familiar
14 with, other than that I don't believe we have anything
15 else.

16 Q. And do you recall what form of communication
17 resulted in [REDACTED] and [REDACTED] --
18 [REDACTED] to approach you?

19 MR. MCCARTHY: Objection form.

20 THE WITNESS: I'm --

21 MR. MCCARTHY: Objection. Just caution
22 the witness to allow counsel to rise objections.
23 Objection form. Objection First Amendment and
24 associational privileges. I just want to caution the
25 witness not to disclose any communications with SFFA's

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1 members. You can answer the question while abiding that
2 instruction then you may do so.

3 THE WITNESS: Thank you, Mr. McCarthy.
4 Through our website.

5 Q. (BY MR. HINOJOSA) Through your website, okay.
6 Were -- was [REDACTED] and [REDACTED] were they also the members
7 of SFFA who SFFA relied upon for standing in the prior
8 2019 state lawsuit?

9 MR. MCCARTHY: Objection form.

10 THE WITNESS: Yes.

11 Q. (BY MR. HINOJOSA) Were there any other members
12 of SFFA at that time that you -- you were bringing the
13 29 -- '19 lawsuit that you were relying on for standing?

14 MR. MCCARTHY: Objection form.

15 THE WITNESS: No.

16 Q. (BY MR. HINOJOSA) And currently SFFA has no
17 other members who have applied to UT and been rejected
18 for which it is asserting that it has standing in this
19 case --

20 MR. MCCARTHY: Objection.

21 Q. (BY MR. HINOJOSA) -- is that correct?

22 MR. MCCARTHY: I'm sorry, counsel.
23 Objection form.

24 THE WITNESS: Yes.

25 Q. (BY MR. HINOJOSA) And SFFA doesn't presently

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1 have any members who are Asian American who were denied
2 admission to UT Austin for whom SFFA claims
3 associational standing in this case, correct?

4 MR. MCCARTHY: Objection form.

5 THE WITNESS: Correct.

6 Q. (BY MR. HINOJOSA) And I believe this is your
7 -- one of four current lawsuits that you have
8 challenging race-conscious admissions and when I say
9 you, I mean, SF -- SFFA.

10 A. Yes.

11 Q. And this is the third lawsuit against UT since
12 2016, correct?

13 A. Yes.

14 Q. And before the lawsuit was filed in this case
15 you had an opportunity to review the lawsuit, correct?

16 A. Yes.

17 Q. And [REDACTED] ended -- ended up approving
18 that -- the filing of the lawsuit against UT, correct?

19 MR. MCCARTHY: Objection form.

20 THE WITNESS: Yes.

21 Q. (BY MR. HINOJOSA) And it approved the amended
22 filing of the lawsuit of the current fed -- federal
23 lawsuit?

24 MR. MCCARTHY: Objection form.

25 THE WITNESS: I just -- I thought I just

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1 answered that question, Mr. Hinojosa. Yes, so [REDACTED]
2 approved the filing of the new federal lawsuit.

3 Q. (BY MR. HINOJOSA) Sure. And I was just making
4 sure because there is an amended lawsuit. You might
5 recall that some state claims SFFA ended up dropping in
6 response to some objections made by UT so I just wanted
7 to make sure that the board had authorized that.

8 MR. MCCARTHY: Counsel, are you referring
9 to an amended claim?

10 MR. HINOJOSA: The amended -- amended
11 complaint, yes.

12 MR. MCCARTHY: So not a new lawsuit, but
13 an amended complaint in the current proceeding?

14 MR. HINOJOSA: Yes.

15 MR. MCCARTHY: Okay. Just want to make
16 sure, might help the witness understand and answer the
17 question. Objection form.

18 THE WITNESS: So [REDACTED] did not
19 approve the amended complaint.

20 Q. (BY MR. HINOJOSA) Okay. Have you had an
21 opportunity to review the amended complaint?

22 MR. MCCARTHY: Objection form.

23 THE WITNESS: I've read it once, yes.

24 Q. (BY MR. HINOJOSA) And you're familiar with the
25 claims in the case.

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1 A. Yes.

2 Q. And you're also familiar with the -- UT's
3 admissions process generally the form of the -- the
4 75 percent that are -- well, let me ask -- let me ask
5 you more simple question first. Are you familiar --
6 generally familiar with UT's admissions process that
7 your challenging?

8 MR. MCCARTHY: Objection form.

9 THE WITNESS: Generally, yes.

10 Q. (BY MR. HINOJOSA) Sure. And you understand
11 that 75 percent of the admissions into UT are made
12 through the top ten percent plan; is that correct?

13 MR. MCCARTHY: Objection form.

14 THE WITNESS: Yes, the top ten percent
15 plan, but it's my understanding now, it's no longer the
16 top two percent that's actually automatically admitted,
17 it's six percent.

18 Q. (BY MR. HINOJOSA) Yes, because of the
19 75 percent cap on admissions, is that your
20 understanding?

21 MR. MCCARTHY: Objection form.

22 THE WITNESS: That's my under -- that's
23 my understanding.

24 Q. (BY MR. HINOJOSA) And you identified the top
25 ten percent plan as a race-neutral admissions plan; is

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1 that correct?

2 MR. MCCARTHY: Objection form.

3 THE WITNESS: Yes --

4 MR. MCCARTHY: Objection. Calls for
5 legal conclusion.

6 Q. (BY MR. HINOJOSA) And you're not contesting --

7 THE WITNESS: Tom -- excuse me one
8 minute. Tom, you're -- you're coming in a little late
9 maybe you can speak up a little bit louder because I'm
10 -- I'm -- I'm -- I appear to be cutting you off before
11 you've lodged your -- your, yeah.

12 MR. MCCARTHY: Please -- please make sure
13 you leave me time to lodge an objection.

14 THE WITNESS: Yeah. Okay.

15 Q. (BY MR. HINOJOSA) All right. And you're not
16 contesting the lawfulness of the top ten percent plan,
17 correct?

18 A. Correct.

19 Q. For the non-top ten percent factors or for the
20 non-top percent plan, you understand that the University
21 looks at both an academic index and a personal
22 achievement index?

23 MR. MCCARTHY: Objection form.

24 Q. (BY MR. HINOJOSA) Let me -- let me restate
25 that 'cause it was, you know, wrongly formed question

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1 MR. MCCARTHY: Let's continue.

2 MR. HINOJOSA: Sure.

3 Q. (BY MR. HINOJOSA) So you understand for the
4 non -- for -- for the students who are admitted outside
5 of the top ten percent through this academic index and
6 personal achievement index that UT uses a holistic
7 admissions process; is that correct?

8 MR. MCCARTHY: Objection form and
9 objection to the extent it calls for a legal conclusion.

10 THE WITNESS: I -- I suppose that's
11 correct.

12 Q. (BY MR. HINOJOSA) Okay. And in Paragraph 25
13 -- I can pull this up if you want, but in Paragraph 25
14 when you -- in the complaint you identify a series of
15 factors that are part of the achievement score -- let me
16 go ahead and pull that up just to make things clearer.
17 Let me know when you pull that up and when you do if you
18 can go to Paragraph 25?

19 MR. MCCARTHY: It's opening a little
20 slowly for me. Counsel did -- I'm sorry. Did you say
21 paragraph or Page 25?

22 MR. HINOJOSA: Paragraph 25 it's on
23 Page 5.

24 MR. MCCARTHY: Okay. I'm -- I'm at the
25 right place.

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1 MR. MCCARTHY: I'll stand on my objection
2 and I'm gonna instruct the witness not to answer if
3 you're gonna keep asking questions about the merits.

4 Q. (BY MR. HINOJOSA) So are you refusing to
5 answer any questions on your level of competence on the
6 different legal claims you've brought against this
7 different -- against UT Austin?

8 A. On -- on the advice of my counsel. I am not
9 going to be answering those questions.

10 Q. All right. Now, you've brought certain claims
11 against certain universities based on the facts that you
12 have on hand, correct?

13 MR. MCCARTHY: Objection form.

14 THE WITNESS: Yes.

15 Q. (BY MR. HINOJOSA) So you brought for example,
16 an intentional discrimination claim against Harvard and
17 now Yale on behalf of Asian-American students, but you
18 did not bring that same claim against UNC or UT Austin,
19 correct?

20 MR. MCCARTHY: Objection form.

21 THE WITNESS: That's correct.

22 Q. (BY MR. HINOJOSA) And those claims are tied to
23 the injuries that your members who have applied, have
24 been rejected -- those claims are based on -- on their
25 perceived injuries, correct?

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1 MR. MCCARTHY: Objection to the extent it
2 calls for legal conclusion and objection form.

3 THE WITNESS: Correct.

4 Q. (BY MR. HINOJOSA) So in this case you brought
5 a claim challenging UT's consideration of race is more
6 than a plus factor, correct? It's Count one in your
7 lawsuit?

8 MR. MCCARTHY: Objection form. If you'd
9 like to show -- allow him to review the complaint and
10 answer that's fine.

11 Q. (BY MR. HINOJOSA) Let's -- let's go to
12 Page 40.

13 MR. MCCARTHY: Standing quickly or we're
14 gonna have difficulty here.

15 MR. HINOJOSA: You have a lot of
16 difficulty, Tom

17 MR. MCCARTY: I don't with anybody else.

18 MR. HINOJOSA: Surprise, surprise.

19 MR. MCCARTHY: Please keep your questions
20 within the scope of Court's discovery order.

21 MR. HINOJOSA: Sure.

22 THE WITNESS: So on Page 40 I'm going to
23 read the first count. UT's Austin's use of racial
24 preferences is not narrowly tailored because UT Austin
25 is not pursuing the critical-mass interest found

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1 Q. Okay. If you can also go to paragraph 221
2 there it says, "A university that uses its admission
3 system to pursue quotas or proportional representation
4 of racial or ethnic groups either in the entering class
5 or in the overall student body violates the Fourteenth
6 Amendment and therefore violates Title VI." Did I read
7 that correctly?

8 A. Yes.

9 Q. And then in paragraph 22 -- 222 if you can
10 read that for -- for the record, please.

11 A. So reading for the record as oral, "Remarkable
12 stability of UT Austin's admissions figures for African-
13 American students demonstrates that UT Austin is seeking
14 proportional representation of African-Americans and is
15 engaged in racial balancing."

16 Q. So am I correct to understand -- I -- I don't
17 see anything else there and you can finish reading these
18 other paragraphs here, but am I correct to understand
19 that SFFA's racial balancing claim is targeting its
20 treatment of African-American students and not any other
21 group of students including Hispanic students?

22 MR. MCCARTHY: Objection form. Objection
23 to the extent it calls for a legal conclusion and
24 objection on the grounds that the question is outside
25 the scope of the Court's discovery order. I instruct

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1 the witness not to answer the question.

2 MR. HINOJOSA: This is entirely not. I'm
3 trying to figure out whether or not he has a particular
4 claim of racial balancing against Hispanics. How can I
5 argue whether or not he has standing -- his members have
6 had standing in that particular claim without clarifying
7 that the racial balancing claim pertains to only
8 African-American students.

9 MR. MCCARTHY, David, this has nothing to
10 do with standing. I can't help you if you don't
11 understand the standing analysis, but I'm gonna instruct
12 the witness not to answer the question because it is not
13 within the scope of the Court's discovery order.

14 Q. (BY MR. HINOJOSA) Are you gonna take your
15 counsel's advice?

16 A. On advice of counsel, I am unable to answer
17 your question.

18 MR. HINOJOSA: All right. And I'll
19 certify this question and the other questions that the
20 witness is refusing to testify rather than calling up
21 the judge right now and getting on the phone because
22 this -- we're -- we're gonna just, you know, just go
23 ahead and proceed with this deposition, but I am gonna
24 reserve the right to ask [REDACTED] each of these
25 questions and to recall them into the deposition at

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1 another time.

2 MR. MCCARTHY: We understand that David,
3 I said that at the outset of the top. We have an
4 agreement here that the parties all agreed to do. That
5 if we instruct the witness not to answer and the witness
6 abides by that instruction and you'd like to take up
7 with the Court -- or afterwards you can take it up with
8 the Court if you need to then and we recognize that that
9 means that you may have the right to recall the witness.
10 Pursuant to that agreement let's go ahead and if I
11 instruct the witness not to answer and the witness
12 sticks with that instruction you can deal with it after
13 the fact.

14 Q. (BY MR. HINOJOSA) In that particular
15 Paragraph 222 of Exhibit 031, the amended complaint.
16 Can you tell me what the basis is that you believe that
17 UT Austin is seeking proportional representation of
18 African-Americans and is engaged in racial balancing?

19 MR. MCCARTHY: Objection form. Objection
20 to the extent it calls for communications between
21 communications of counsel and again, objection on the
22 grounds that the question's outside the scope of the
23 Court's discovery order. I instruct the witness not to
24 answer the question.

25 Q. (BY MR. HINOJOSA) [REDACTED] are you not going

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1 to answer the question?

2 A. Mr. Hinojosa on advice of counsel I am not
3 going to answer the question.

4 MR. HINOJOSA: We'll certify that
5 question too.

6 Q. (BY MR. HINOJOSA) Are there any facts that
7 you're aware of right now, outside of the allegations,
8 the complaint that support that you're aware of that
9 support your claim of racial balancing against UT
10 Austin?

11 MR. MCCARTHY: Objection. Outside the
12 scope of the Court's discovery order. I instruct the
13 witness not to answer the question.

14 THE WITNESS: On advice of counsel I'm
15 not going to answer the question.

16 MR. HINOJOSA: All right. Certify that
17 question too.

18 Q. (BY MR. HINOJOSA) Are you suggesting that UT
19 Austin should be admitting fewer African-Americans into
20 UT Austin?

21 MR. MCCARTHY: Objection form. Objection
22 outside the scope of the Court's discovery order and I
23 instruct the witness not to answer the question.

24 THE WITNESS: On advice of counsel, Mr.
25 Hinojosa, I'm not going to answer that question.

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1 MR. HINOJOSA: All right. Certify that
2 question too.

3 MR. MCCARTHY: David, none of this has
4 anything to do with standing or red judicata.

5 MR. HINOJOSA: Well, I'm sorry you
6 understand it, but --

7 MR. MCCARTHY: David, you're basically
8 harassing the witness now.

9 MR. HINOJOSA: I'm not harassing the
10 witness and as a matter of fact, what's -- what's
11 happening here, Mr. McCarthy, is that you're harassing
12 me as cocounsel and I would appreciate it if you could,
13 you know, afford me the proper decorum as we're trying
14 to investigate these stark allegations that in the end
15 are aimed at suppressing admission into UT for a highly
16 talented black and Latin X students.

17 MR. MCCARTHY: Mr. -- counsel, if you
18 want to investigate these allegations the proper time to
19 do that is in discovery of the merits. It's not right
20 now during the deposition --

21 MR. HINOJOSA: And this is -- this wholly
22 touches upon whether or not your client, SFFA has been
23 harmed by the racial balancing, whether or not that harm
24 is causally related to the actions of UT and whether or
25 not they would -- their entries would actually be

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1 redressed. And the difficulty that you've placed here
2 is us being able to just venture to guess, you know,
3 some of these -- what we think are fairly obvious, but
4 not clear questions and try to clarify those things up
5 as we submit our brief to the Court and, you know, it's
6 apparent that you're gonna be obtrusive, you know, to
7 that and should we need to take this to the Court, we'll
8 take this to the Court.

9 MR. MCCARTHY: I'm not going to try to
10 tell you how to litigate your case, if you'd like to
11 take these things up with the Court you should feel free
12 to take them there.

13 Q. (BY MR. HINOJOSA) So -- so what facts do you
14 have available that demonstrate that [REDACTED]
15 and [REDACTED] SFFA members, would have been admitted
16 if UT had not racially balanced?

17 MR. MCCARTHY: Objection form. Objection
18 outside the scope of the Court's discovery order. I
19 instruct the witness not to answer the question.

20 THE WITNESS: On advice of counsel, I'm
21 not going to answer the question.

22 Q. (BY MR. HINOJOSA) So can you tell me how
23 SFFA's members for which it's seeking relief in this
24 case for [REDACTED] and [REDACTED] how they've
25 been harmed by UT's racial balancing of black students?

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1 MR. MCCARTHY: Objection form. Objection
2 to the extent it calls for legal conclusion.

3 THE WITNESS: I think Mr. McCarthy has
4 also perhaps forgot to remind me that I'm not to answer
5 this question; is that correct, Mr. McCarthy?

6 MR. MCCARTHY: I don't know if you can
7 answer without, you know, drawing a legal conclusion.
8 It's an objective form. I stand by those objections.

9 THE WITNESS: Mr. Hinojosa, I'm unable to
10 answer that question.

11 Q. (BY MR. HINOJOSA) Why is that?

12 A. On advice of Mr. McCarthy.

13 Q. Mr. McCarthy's only advising you if you can't
14 state that without a legal conclusion.

15 A. I -- I should have been more fulsome. I am
16 unable to answer that question without stating a legal
17 conclusion.

18 Q. (BY MR. HINOJOSA) What are the facts known to
19 you that demonstrate that [REDACTED] and
20 [REDACTED] have been harmed by the racial
21 balancing of African-American students at UT as you
22 allege in your complaint?

23 MR. MCCARTHY: Objection form. Objection
24 outside the scope of the Court's discovery order. I
25 instruct the witness not to answer the question.

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1 THE WITNESS: On advice of counsel, I'm
2 -- I'm not going to answer that question.

3 MR. HINOJOSA: So -- so I just want to
4 make this clear Mr. McCarthy. In a case where we have
5 to demonstrate that your clients -- with our briefing at
6 least -- you'll -- you ultimately have the standing.
7 That -- that your gonna instruct your client not to
8 witness, I mean, not to answer a question where we're
9 merely seeking the facts that they rely upon in
10 asserting that they've been harmed by the actions that
11 you complain of? This is your claims.

12 MR. MCCARTHY: Counsel, you're asking
13 questions about the facts -- factual basis underlining
14 allegations about racial balancing. That doesn't have
15 anything to do with that.

16 MR. HINOJOSA: It has to do with the
17 harm. I asked specifically about the harm that has been
18 caused. What facts do they have because I can't find
19 any in the complaint so I'm trying to figure out how [REDACTED]
20 [REDACTED] and [REDACTED] have been harmed and you're
21 not even letting him answer any facts. It might be
22 because you don't have any facts.

23 MR. MCCARTHY: Saying the word --

24 MR. HINOJOSA: We have the right to
25 discover this.

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1 (Break.)

2 REPORTER: The time is 1:33 p.m. and we
3 are on the record.

4 Q. (BY MR. HINOJOSA) All right. [REDACTED] I'd
5 like for you to go to Page 21 of Exhibit 031 which is
6 the amended complaint.

7 (Exhibit No. 031, marked.)

8 THE WITNESS: Hold on Mr. Hinojosa, I
9 think I'm gonna have to load that again, just a second.

10 MR. HINOJOSA: Sure.

11 THE WITNESS: Something's not right.
12 Okay. I think I'm at it now. Would you repeat the page
13 or paragraph again, please.

14 Q. (BY MR. HINOJOSA) Sure. Page 21,
15 Paragraph 111.

16 A. Okay. I'm at that paragraph.

17 Q. And I wanted to shift gears for the racial
18 balancing claim now to the race-neutral alternative
19 claim that you have and in Paragraph 11, it seems that
20 SFFA's contention here is that you UT can increase the
21 use of the top ten percent plan and admit the remaining
22 25 percent through race-neutral means, is that -- is
23 that consistent with your contentions in this case?

24 MR. MCCARTHY: Objection form.

25 THE WITNESS: The paragraph says what it

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1 says. I stand by the wording in the paragraph.

2 Q. (BY MR. HINOJOSA) Yeah, and what I'm trying to
3 make sure that I understand is that you're essentially
4 saying that 75 percent cap could be listed -- could be
5 lifted and you could just submit all through to the top
6 ten percent; is that correct?

7 MR. MCCARTHY: Objection on the grounds
8 of this is outside the Court's discovery order. I
9 instruct the witness not to the answer the question.

10 THE WITNESS: Based upon advice of
11 counsel, I'm not going to answer the question Mr.
12 Hinojosa.

13 MR. HINOJOSA: All right. Here we go
14 again.

15 Q. (BY MR. HINOJOSA) In the next section going
16 over to Page 22 this is titled UT Austin Has Additional
17 Race-neutral Alternatives Available That Can Achieve
18 Racial Diversity.

19 A. I'm -- I'm at that spot.

20 Q. All right. And in paragraph 114, it says "UT
21 Austin could achieve racial diversity by employing
22 race-neutral alternatives in addition to the top ten
23 percent plan." Did I read that correctly?

24 A. You've read it correctly.

25 Q. And in the next paragraph it says, "UT Austin

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1 could -- also could achieve racial diversity by
2 eliminating the top ten percent plan and adopting
3 race-neutral admissions policies." Did I read that
4 correctly?

5 A. You left out the word new.

6 Q. New. Okay. New race-neutral admissions
7 policies. Sorry about that. So I'm wondering what
8 these new race-neutral admissions policies you're
9 referring to?

10 MR. MCCARTHY: Objection. Outside the
11 Court's discovery order. I instruct the witness not to
12 answer the question.

13 THE WITNESS: On advice of counsel, I'm
14 not going to answer the question.

15 Q. (BY MR. HINOJOSA) Can you tell me how the
16 adoption of new race-neutral admissions policies as you
17 contend here in 115, can you tell me how that would help
18 address the injury of SFFA's associational members as
19 alleged in its race-neutral claim?

20 MR. MCCARTHY: Objection form. Objection
21 to the extent it calls for a legal conclusion.
22 Objection outside of the scope of the Court's discovery
23 order and I instruct the witness not to answer the
24 question.

25 THE WITNESS: Based on advice of counsel,

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1 I am not going to answer the question.

2 Q. (BY MR. HINOJOSA) Can you tell me the facts
3 underlying your content -- or -- answer me this first.
4 Do you contend that if UT Austin engages in race-neutral
5 alternatives as you have requested in your own complaint
6 that the associational members mainly being [REDACTED]
7 and [REDACTED], would then be admitted?

8 MR. MCCARTHY: Objection form. Objection
9 calls for a legal conclusion. Objection it is outside
10 the Court's discovery order. I instruct the witness not
11 to answer the question.

12 THE WITNESS: Based on advice of counsel,
13 I'm not going to answer the question.

14 MR. MCCARTHY: Counsel, the 30 B6 notice
15 did not advise SFFA that anybody intended to read
16 throughout the entirety of the complaint.

17 MR. HINOJOSA: Oh, of course it doesn't,
18 but it does talk about the claims.

19 MR. MCCARTHY: Right.

20 MR. HINOJOSA: And we -- and we mentioned
21 that early on just so I -- just so we all had a clear
22 understanding. Standing is about satisfying the three
23 bullets for each of the claims that you're seeking
24 including the relief. How you expect us to be able to,
25 you know, discuss with the Court how they're not harmed

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1 by this, how they're not injured by these claims that
2 SFFA itself has raised without even giving us an
3 opportunity to discover any underlying facts of these
4 claims is -- again, you know, that's your position and
5 you can defend that with the Court. I'm happy with
6 pursuing that with the Court, but these are all relevant
7 and I'm gonna keep asking you know these questions as
8 they are entirely relevant to us being able to establish
9 that SFFA does not have standing.

10 MR. MCCARTHY: As I said before, your
11 questions go to the merits. We'll continue to object
12 and instruct (audio indiscernible) basically dredge up
13 different paragraphs and the merits, allegations and ask
14 for factual basis underlying them and that kind of
15 thing. Now, the paragraphs in the complaint that really
16 are about standing are the paragraphs from three to
17 eight at the front end.

18 MR. HINOJOSA: Well, I appreciate that.
19 Thanks very much Mr. McCarthy, I'm sorry that I see it
20 differently thank you because that -- there are no
21 claims there. Imagine that.

22 MR. MCCARTHY: I'm sorry. I'm trying to
23 help you out David.

24 MR. HINOJOSA: Of course you are.

25 Q. (BY MR. HINOJOSA) In paragraph 116, SFFA

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1 contends that "Available race-neutral alternatives
2 including, but are not limited to increased use of non-
3 racial preferences." Can you identify more specifically
4 what those use of non-racial preferences are?

5 MR. MCCARTHY: Objection. Outside the
6 scope of the Court's discovery order and I instruct the
7 witness not to answer the question.

8 THE WITNESS: On advice of counsel, I'm
9 not going to answer the question.

10 Q. (BY MR. HINOJOSA) All right. Can you tell me
11 how SFFA and its associational members have been harmed
12 by the failure of UT to increase the use of nonracial
13 preferences as its alleged in its complaint?

14 MR. MCCARTHY: Objection. Outside the
15 scope of the Court's discovery order and I instruct the
16 witness not to answer the question.

17 THE WITNESS: Once again, on advice of
18 counsel, I'm not going to answer the question.

19 Q. (BY MR. HINOJOSA) In the second clause of
20 paragraph 116 of Exhibit 031 it states there that, "As
21 an available race-neutral alternative the increased use
22 of financial aid, scholarships, and recruitment to
23 attract and enroll minority applicants." Can you tell
24 me the underlying facts of how SFFA's associational
25 members have been harmed by the failure of UT to

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1 increase the use of financial aid and those other items
2 that I just mentioned?

3 MR. MCCARTHY: Objection. Outside the
4 scope of the Court's discovery order. I instruct the
5 witness not to answer the question.

6 THE WITNESS: On advice of counsel, I'm
7 not going to answer the question.

8 Q. (BY MR. HINOJOSA) The third clause it says,
9 "Available race-neutral alternatives under included the
10 elimination of admissions policies and practices that
11 operate to the disadvantage of minority applicants."
12 Can you tell me what those admissions policies and
13 practices are that operate to the disadvantage of
14 minority applicants?

15 MR. MCCARTHY: Objection form.
16 Objection. Outside the scope of the Court's discovery
17 order. I instruct the witness not to answer the
18 question.

19 THE WITNESS: On advice of counsel, I'm
20 not going to answer the question.

21 Q. (BY MR. HINOJOSA) Do you contend that SFFA's
22 associational members have been harmed by UTs failure to
23 engage in the elimination of admissions policies and
24 practices that operate to the disadvantage of minority
25 applicants?

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1 MR. MCCARTHY: Objection form.
2 Objection. Outside the Court's discovery order and I
3 instruct the witness not to answer the question.

4 THE WITNESS: On advice of counsel, I'm
5 not going to answer the question.

6 Q. (BY MR. HINOJOSA) Is it your contention that
7 UT Austin's failure to engage in race-neutral
8 alternatives as you've alleged in your amended complaint
9 has caused injury to the plaintiff's associational
10 members?

11 MR. MCCARTHY: Objection form. Objection
12 to the extent it calls for legal conclusion. Objection
13 outside the scope of the Court's discovery order. I
14 instruct the witness not to answer the question.

15 MR. HINOJOSA: And -- and just for
16 clarity --

17 THE WITNESS: On the advice of counsel --

18 MR. HINOJOSA: Go ahead.

19 THE WITNESS: On advice of counsel, I'm
20 not going to answer the question.

21 MR. HINOJOSA: And just for clarity, I'm
22 not asking you for a legal conclusion. I'm asking you
23 simply whether or not it's your contention. Do you
24 still refuse to answer the question.

25 MR. MCCARTHY: His instruction --

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1 THE WITNESS: On advice on counsel, I'm
2 not going to be answering the question.

3 Q. (BY MR. HINOJOSA) Can you tell us here any
4 facts that support how the consideration of any
5 race-neutral alternatives that you proposed in your
6 complaint would help make the -- SFFA's associational
7 members whole if they adopted those race-neutral
8 alternatives?

9 MR. MCCARTHY: Objection form. Objection
10 outside the scope of the Court's discovery order and I
11 instruct the witness not to answer the question.

12 THE WITNESS: On advice of counsel I
13 won't be answering the question.

14 Q. (BY MR. HINOJOSA) Do you agree with me that if
15 SSFA -- excuse me. Let me restate that. That if UT
16 Austin lifted the cap the 75 percent cap that your
17 associational members being [REDACTED] and [REDACTED]
18 [REDACTED] would still not get into UT because they didn't
19 rank in the top ten percent?

20 MR. MCCARTHY: Objection form. Objection
21 to the extent it calls for a legal conclusion and
22 objection. Outside the scope of the Court's discovery
23 order and I instruct the witness not to answer the
24 question.

25 THE WITNESS: On advice of counsel I won't

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1 be answering the question.

2 Q. (BY MR. HINOJOSA) I'm gonna go to Page 43,
3 Paragraph 198 and this is Count 1.

4 MR. MCCARTHY: I'm sorry. What
5 paragraph?

6 MR. HINOJOSA: 198. Hold on right quick.
7 It's paragraph 199 on Page 40.

8 A. Okay.

9 Q. (BY MR. HINOJOSA) Just go ahead and read those
10 first two paragraphs to yourself, paragraphs 199 and
11 200.

12 A. I've read them.

13 Q. In paragraph 201 it states, "That statistical
14 and other evidence shows that UT Austin can no longer
15 justify using race at all or at least must justify it
16 differently, which it has failed to do so." Can you
17 tell me what that statistical and other evidence is that
18 you're referring to in paragraph 201?

19 MR. MCCARTHY: Objection outside the
20 scope of the Court's discovery order and I instruct the
21 witness not to answer the question. I also want to add
22 --

23 THE WITNESS: On advice of counsel, I
24 won't be -- I won't be answering.

25 MR. MCCARTHY: And I'd like to add as I

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1 did before that the 30 B6 notice does not suggest --
2 does not indicate that the witness needs to be prepared
3 to respond to questions about factual basis underlying
4 all of the various allegations in the complaint.

5 MR. HINOJOSA: It talks about the claims
6 and I tried to talk about the claims. Those -- those
7 are -- those underlying allegations do support the
8 particular claims at issue in this case, especially as
9 I've narrowed those -- those questions to items relevant
10 to harmed causation and redressability that pertain to
11 standing in this case.

12 MR. MCCARTHY: I guess we'll disagree on
13 that.

14 MR. HINOJOSA: Sure.

15 MR. MCCARTHY: I'll maintain the
16 objection and I maintain the objection on the scope of
17 the discovery order and I maintain the instruction that
18 the witness not answer the question.

19 Q. (BY MR. HINOJOSA) In Paragraph 201, as I just
20 mentioned, are there any facts that you alleged in your
21 complaint that refer to that statistical and other --
22 other evidence showing that UT could no longer justify
23 using race at all? Or at least must justify it
24 differently which it has failed to do so. Can you
25 refer me to any of the allegations in your complaint

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1 that support that?

2 MR. MCCARTHY: Objection. Outside the
3 scope of the Court's discovery order. I instruct the
4 witness not to answer the question.

5 THE WITNESS: On advice of counsel I
6 won't be answering that question.

7 Q. (BY MR. HINOJOSA) In the next paragraph I'll
8 let you go ahead and read that to yourself, but it also
9 talks about statistical and other evidence shows that
10 each applicant is not evaluated as an individual instead
11 race or ethnicity is the defining feature of the
12 application and I'll go ahead and let you finish reading
13 that to yourself.

14 A. I've completed it.

15 Q. Can you tell me what statistical and other
16 evidence shows that each applicant is not evaluated as
17 an individual?

18 MR. MCCARTHY: Objection. Outside the
19 scope of the Court's discovery order and I instruct the
20 witness not to answer the question.

21 THE WITNESS: On advice of counsel I
22 won't be answering that question.

23 Q. (BY MR. HINOJOSA) Can you tell me any
24 underlying facts that support your claim as described in
25 Paragraph 202?

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1 MR. MCCARTHY: Objection. Outside the
2 scope of the Court's discovery order and I instruct the
3 witness not to answer the question.

4 THE WITNESS: On advice of counsel, I
5 won't be answering that question.

6 Q. (BY MR. HINOJOSA) Paragraph 203 states
7 "Plaintiff's members have been and will continue to be
8 injured because UT Austin's intentionally discriminatory
9 admissions policies and procedures continued to deny
10 them the opportunity to compete for admission to UT
11 Austin and equal footing with other applicants on the
12 basis of race or ethnicity." Can you tell me how -- what
13 facts support your contention that plaintiff's members
14 have been injured?

15 MR. MCCARTHY: Objection form. Objection
16 to the extent it calls for legal conclusion. You may
17 otherwise answer his allegation as his allegation is
18 about standing.

19 THE WITNESS: Let me read it again. So
20 we're on number 203. Mr. Hinojosa would you restate
21 your question for me, please?

22 Q. (BY MR. HINOJOSA) Sure. How has plaintiff's
23 members been injured because UT Austin's intentional
24 discriminatory admissions and policies continue to deny
25 them the opportunity to compete for admission as you

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1 allege here in Paragraph 203?

2 A. Their race and ethnicity -- I'm sorry. Go
3 ahead Mr. McCarthy.

4 MR. MCCARTHY: Objection form. Objection
5 to the extent it calls for legal conclusion. I'm sorry
6 you can go ahead and answer to the extent you can abide
7 those instructions.

8 THE WITNESS: Mr. McCarthy would you
9 state your objection once more so that I can -- I can
10 frame my answer or not frame my answer around your
11 objection.

12 MR. MCCARTHY: Sure. Objection form.
13 Objection to the extent it calls for a legal conclusion.

14 THE WITNESS: Mr. Hinojosa my answer
15 would entail a legal conclusion, so therefore based upon
16 this -- the advice of counsel just now I'm going to be
17 unable to answer that question.

18 Q. (BY MR. HINOJOSA) And I am not asking you here
19 or in any other questions that I've asked you about you
20 forming a legal conclusion. So if you can put that
21 aside which you should be able to because your counsel
22 cannot instruct you to not answer a question based on a
23 legal conclusion. I want to know what the facts are
24 that you can tell me about how plaintiff's members have
25 been or will continue to be injured as you allege in

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1 testify to as the plaintiff in this case, but sure we
2 can --

3 MR. MCCARTHY: And the 30 B 6 notice did
4 not indicate that every paragraph of the complaint was
5 going to be the subject of this deposition nor would it
6 be given ordnance in the Court's discovery (audio
7 indiscernible) and the witness is able to answer the
8 question without learning a (audio indiscernible)
9 Court's discovery order or other relevant privileges
10 then witness can answer.

11 MR. HINOJOSA: I'm just trying to follow
12 up with some questions here.

13 Q. (BY MR. HINOJOSA) So Page 18 of the complaint
14 has some charts.

15 A. I see that.

16 Q. Okay. And actually lets -- let's go to
17 Page 21. Sorry about that. It's Paragraph 109. And do
18 you see that chart there that's titled or the table
19 that's titled --

20 A. I do.

21 Q. -- 2019 admitted students from Texas by race
22 and automatic admissions status?

23 A. I do.

24 Q. And it says that students admitted via the top
25 ten percent plan are 29 percent white. Students

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1 admitted outside the top ten percent plan are 42 percent
2 white. Do you see that?

3 A. I do.

4 Q. So you would agree with me that students
5 admitted outside the top ten percent plan are whiter on
6 average than students under the top ten percent plan,
7 correct?

8 MR. MCCARTY: Objection form.

9 THE WITNESS: Correct, I'm sorry.

10 Q. (BY MR. HINOJOSA) And yet your allegation is
11 that these associational members are injured because of
12 UT's consideration of race for those students admitted
13 outside the top two percent plan; is that correct?

14 MR. MCCARTHY: Objection form. Objection
15 on the grounds the question is outside the scope of the
16 Court's discovery order and I instruct the witness not
17 to answer the question.

18 THE WITNESS: On advice of counsel I
19 won't be answering this question.

20 Q. (BY MR. HINOJOSA) Going to Page 49 of the
21 complaint are you there?

22 A. Yes, I am now.

23 Q. Do you understand that this paragraphs --
24 following paragraph or this section following
25 paragraph 244 is the relief that you have asked the

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1 Court to issue in this case?

2 A. I understand that to be the case.

3 Q. And under standing rules I'll just say this is
4 a preface so that your counsel can understand that you
5 know there's Supreme Court case law that says we're
6 allowed to discover standing as it pertains to each
7 claim and claim for relief in this case so that's why
8 I'm gonna ask you, you know, these few questions here.

9 Do you understand that other universities that
10 don't use a race-conscious policy still allow students
11 to lift up their racial identity and their racial
12 experiences in an application. Do you just understand
13 that generally?

14 MR. MCCARTHY: Objection form. Objection
15 outside the scope of the Court's discovery order. I
16 instruct the witness not to answer the question.

17 THE WITNESS: On advice of counsel I
18 won't be answering the question.

19 Q. (BY MR. HINOJOSA) And you're asking here under
20 letter C a permanent injunction barring defendants from
21 using race as a factor in future undergraduate
22 admissions decisions; is that correct?

23 A. The paragraph reads that way -- let me read it
24 so I -- I won't misrepresent it. "A permanent
25 injunction barring dependents from using race as a

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1 factor in future undergraduate admissions decisions at
2 UT Austin."

3 Q. Under D, you asked for "A permanent injunction
4 requiring defendants to conduct all admissions in a
5 manner that does not permit those engaged in the
6 decisional process to be aware of or learn the race or
7 ethnicity of any applicant for admission." Did I read
8 that correctly?

9 A. You read it correctly.

10 Q. So can you tell me about this more specific
11 relief why you think that censoring applications of
12 students from even -- from as you alleged here, you
13 know, officials who are engaged in the decisional
14 process to be aware of or learn the race or ethnicity of
15 any applicant for admission, how that would make the
16 plaintiffs whole in this case?

17 MR. MCCARTHY: Objection form. Objection
18 outside the scope of the Court's discovery order. I
19 instruct the witness not to answer the question.

20 THE WITNESS: On advice of counsel, I'm
21 not going to answer the question.

22 Q. (BY MR. HINOJOSA) So can you tell me any facts
23 -- again, I'm not asking for a legal conclusion. Just
24 any facts that you are aware of that would demonstrate
25 -- hold on. Let me rephrase that. Can you tell me any

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1 facts -- let me ask you another question. Are you
2 requesting that the Court censor applications in this
3 case?

4 MR. MCCARTHY: Objection form. Objection
5 outside the scope of the Court's discovery order. I
6 instruct the witness not to answer the question.

7 THE WITNESS: On advice of counsel I
8 won't answer the question.

9 Q. (BY MR. HINOJOSA) Are you asking under your
10 claim of relief here under D are you asking the Court
11 that it should not allow students to discuss their
12 racial identity and their racial experiences in their
13 application for admissions?

14 MR. MCCARTHY: Objection form. Objection
15 outside the scope of the Court's discovery order. I
16 instruct the witness not to answer the question.

17 THE WITNESS: On advice of counsel I
18 won't answer the question.

19 Q. (BY MR. HINOJOSA) Putting aside the use of
20 race as a factor in admissions -- put that aside. Can
21 you tell me how the student associational members of
22 SFFA are harmed by those engaged in the decisional
23 process being aware of or learning the race or ethnicity
24 of any applicant for admission?

25 MR. MCCARTHY: Objection form. Objection

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1 to the extent it calls for a legal conclusion.

2 Q. (BY MR. HINOJOSA) And I'm not asking for a legal
3 conclusion.

4 MR. MCCARTHY: I stand by my objection.

5 THE WITNESS: Mr. McCarthy are you -- are
6 you objecting to my answering this question?

7 MR. MCCARTHY: I'm not instructing you
8 not to answer the question. I'm objecting to the form
9 and I'm objecting to the extent it calls for a legal
10 conclusion. You may answer consistent with that
11 guidance.

12 THE WITNESS: Mr. Hinojosa would you ask
13 your question once again?

14 MR. HINOJOSA: Ms. Hoffman, would you do
15 me the favor.

16 REPORTER: Yes. Give me one second.

17 MR. HINOJOSA: Should begin with putting
18 aside the consideration of race.

19 (Read back last question.)

20 MR. MCCARTHY: Objection form. And
21 actually I'll object on the grounds it's outside the
22 scope of the Court's discovery order. I instruct the
23 witness not to answer.

24 THE WITNESS: On advice of counsel, I --I
25 won't be answering the question.

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1 MR. HINOJOSA: Just give me a second. We
2 can go off the record for a minute.

3 MR. MCCARTHY: Okay.

4 REPORTER: The time is 2:11 p.m. and we
5 are off the record.

6 (Break.)

7 REPORTER: The time is 2:14 p.m. and we
8 are back on the record.

9 Q. (BY MR. HINOJOSA) Yeah, I just want to make it
10 clear for the record that the student intervenors do
11 intend to, you know, pursue each of the questions that
12 was not answered here under the advice of counsel and
13 that in no -- in none of those questions were asking for
14 a legal conclusion and we understand the rules of court
15 you do not permit a witness to refuse to answer solely
16 because a question is objective to -- on those grounds
17 and on any other grounds outside of, you know, the
18 specific instructions of counsel and to the extent that
19 we need to certify you know those questions we would
20 certify each and every one of those questions as
21 presented here on the record. No further questions.

22 MR. MCCARTHY: We understand your
23 position and the parties can proceed accordingly. Let
24 me take a short break to see if there'll be any redirect
25 and, you know, give me maybe five minutes if we have

1 much it won't be long, but give me five minutes to think
2 through it and then we'll get back on the record, is
3 that okay for everybody?

4 MR. POWERS: That's fine.

5 REPORTER: The time is 2:16 p.m. and we
6 are off the record.

7 (Break.)

8 REPORTER: The time is 2:22 p.m. and we
9 are back on the record.

10 MR. MCCARTHY: SFFA has no questions for
11 the witness. There'll be no redirect.

12 MR. POWERS: Nothing further. Thanks
13 everyone.

14 MR. MCCARTHY: Thank you.

15 REPORTER: All right. Before we go off
16 the record, can I get any transcript orders?

17 MR. MCCARTHY: Sure.

18 MR. POWERS: We'll repeat our order from
19 last time.

20 MR. MCCARTHY: Yeah, we'll do the same.

21 THE WITNESS: Tom, hold on. I just want
22 to go to your office and clarify one thing.

23 VIDEOGRAPHER: Counsel, do we have video
24 orders?

25 MR. HINOJOSA: Carter?

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1 MS. SIMPSON: Yep. We will -- we'll be
2 emailing about getting a transcript as soon as a
3 non-rush becomes available.

4 VIDEOGRAPHER: And did anybody have video
5 orders?

6 MR. POWERS: I'm sure we do.

7 THE WITNESS: Sorry everyone just the
8 worry wart in me.

9 MR. MCCARTHY: Same order as normal for
10 us. I don't even know what it was. Somebody else is in
11 charge of making the orders so whatever we did last time
12 is fine.

13 REPORTER: All right. And the time is
14 2:23 p.m. and we are off the record.

15 (Off the record at 2:23 p.m.)
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25 WITNESS NAME: [REDACTED]

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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

3	Students For Fair)	
4	Admissions, INC.,)	
)	
5	Plaintiff,)	
)	CIVIL ACTION
6	VS.)	
)	NO: 1:20 cv 00763 RP
7	UNIVERSITY OF TEXAS AT)	
8	AUSTIN, ET AL.,)	
)	
9	Defendants.)	

REPORTER'S CERTIFICATE
OF [REDACTED]

I, Miah Hoffman, CSR, do hereby certify that the foregoing deposition is a full, true and correct transcript;

That the foregoing deposition of Witness, [REDACTED], the Witness, hereinbefore named was at the time named, taken by me in oral stenograph on February 26, 2021, the said Witness having been by me first duly cautioned and sworn to tell the truth, the whole truth, and nothing but the truth, and the same were thereafter reduced to typewriting by me or under my direction. The charge for the completed deposition is \$ _____ due from Defendant;

() That pursuant to the Federal Rules of

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1 Civil procedure, the Witness shall have 30 days after
2 being notified by certified mail, return receipt
3 requested, by the deposition officer that the original
4 deposition transcript is available in her office for
5 review and signature by the Witness and if any
6 corrections made are attached hereto;

7 () That by agreement of counsel, a reading
8 condensed copy of the deposition transcript along with
9 the full-sized original Changes and Signature Sheet has
10 been sent to _____ on _____ for review
11 and signature within 30 days and if any corrections
12 returned are attached hereto;

13 () That by agreement of counsel, the
14 deposition officer is instructed to release the original
15 deposition transcript to
16 _____ on _____ for review and
17 signature, and the deposition officer is thereafter
18 released of any further responsibility with regard to
19 the original;

20 () That the witness shall have thirty (30)
21 days for review and signature of the original transcript
22 and if any corrections returned are attached hereto;

23 () That the signed transcript () was () was
24 not received from the Witness within 30 days;

25 () That the examination and signature of the

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1 Witness is waived by the Witness and the parties;

2 That the amount of time used by each party at
3 the deposition is as follows:

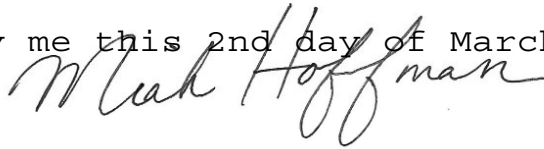
4 Mr. Powers: 03 HOURS:31 MINUTE(S)

5 Mr. Hinojosa: 01 HOURS:24 MINUTE(S)

6 Mr. McCarthy: 00 HOURS:00 MINUTE(S)

7 I further certify that I am neither counsel for,
8 related to, nor employed by any of the parties or
9 attorneys in this action in which this proceeding was
10 taken, and further that I am not financially or
11 otherwise interested in the outcome of the action.

12 Certified to by me this 2nd day of March, 2021.



13
14
15 MIAH HOFFMAN, CSR 11773
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